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IN THE

Supreme Court of the United States

October Term, 1949

JOHN HOWARD LAWSON
vs.
THE UNITED STATES OF AMERICA — No. 248

DALTON TRUMBO
vs.
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EDWARD K. BARSKY, ET AL
vs.
THE UNITED STATES OF AMERICA — No. 766

GEORGE MARSHALL
vs.
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RICHARD MORFORD
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HELEN PARKER, ET AL
vs.
COUNTY OF LOS ANGELES, ET AL — No. 49

MOTION FOR LEAVE TO FILE AND BRIEF OF THE PROGRESSIVE PARTY OF AMERICA AND THE AMERICAN LABOR PARTY OF THE STATE OF NEW YORK AS AMICI CURIAE ON PETITIONS FOR WRITS OF CERTIORARI

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TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES THEREOF:

Leave is respectfully requested to file the annexed brief Amici Curiae in the above cases because of the belief of the

applicants that a refusal of certiorari will not only work hardships upon the appellants by denying them proper consideration of serious constitutional questions, but will also embed in the tissue of our law the erroneous constitutional concepts of the lower courts, which have sustained the severely repressive practices adopted by the legislative and executive arms of the Federal and many state governments. These cases, therefore, warrant the most serious attention of this Court. Their outcome will delimit the boundaries of the civil liberties of all Americans for many years to come. The applicants, therefore, present for the aid of the Court their considerations of one aspect of the basic constitutional question therein involved.

STATEMENT

The Progressive Party of America, is a national political party, founded July, 1948. It was born in the deep conviction that freedom and opportunity must be secured to all. It adopted the principle:

> ". . . that it is the first duty of government to secure for all people, regardless of race, creed, color, sex, national background, political belief, or station in life, the inalienable rights proclaimed in the Declaration of Independence and guaranteed by the Bill of Rights." (*Platform of the Progressive Party*, as adopted at the Founding Convention, Philadelphia, July 23-25, 1948).

Its platform incorporated the view that the struggle for the constitutional right of all political groups to express their views is the first line of defense of the liberties of a democratic people. It condemned the obtaining practice, under cover of law or otherwise, to suppress political dissent, and more particularly pointed to the activities of the House Committee on Un-American Activities and the "loyalty purge" programs of Federal and State governments as incursions on the constitutionally protected rights of freedom of opinion, expression, belief and association.

The American Labor Party of the State of New York is a

political party organized and existing in the said State for almost a decade and a half. Upon the constitution of the Progressive Party, it became its New York affiliate, retaining its original name, but ratifying and adopting the policies, principles and program of the national organization. In the last presidential election, the American Labor Party garnered over one-half million votes in New Yok State.

The five cases, herein, result from the activities of the said House Committee on Un-American Activities and the operation of a State "loyalty" program. Their history typifies a pattern of government action which has gripped the nation since the conclusion of World War II. The manner of their final determination will have far reaching effects in defining the rights and liberties of the American people. The deep concern of the Progressive and American Labor Parties for the maintenance and extension of the civil rights of the citizens of this country moves them to submit this brief amici curiae for the consideration of this Court.

ARGUMENT

The Constitution of the United States was fought for, conceived in, and ratified by, a generation of men, bred under the heel of a tyrant. Their memories bore the stamp of the coerced conformity and political repression of the Court of High Commission, the Star Chamber and the Royal legislatures—the earmarks of the retention of political power by the few over the many. They remembered, also, the Magna Carta and the Petition of Rights, and the bloody Revolutionary victory of the Colonies over the British Empire, hard-brought by the courage and fortitude of the people.

The authors of the Constitution, therefore, as Jefferson, identified "themselves with the people, have confidence in them, cherish and consider them as the most honest and safe, although not th most wise, depository of the public interest." They wrote into that fundamental document the basic doctrine that the enlightened judgment of a free people should

be the law by which the nation should be governed. They bottomed our institutions on the thesis of "the authority of constitutions over governments, and of the sovereignty of people over constittuions." (James Madison in *Elliot's Debates on the Federal Constitution* (2nd Ed., 1836) Vol. IV, p. 550).

The century and a half of this nation's independent existence has seen many tests of the strength of these foundations of democratic government. The first challenge to the new Republic, soon after its institution, was thrown down by the Federalist party, the protagonist of the theory of government by superior classes, under the leadership of Alexander Hamilton ("The people Sir, is a beast"). Then in control of the government, the Federalists set about the establishment of their program: to overthrow the Republic and set up a dictatorship which would irrevocably concentrate all state power in the hands of the privileged class.

Recognizing that their program could succeed only through the concealment of their true purposes and the suppression of the people's opposition, they concentrated their attack against Jefferson and the newly organized Republican party, which he led. They whipped up a war fever against the revolutionary French government and coupled with this, unfounded assertions that France was spreading propaganda through paid agents (Cushman, R. E., *Alien and Sedition Acts in Encyclopedia of Social Sciences,* Vol. I, pp. 635-636), and that revolutionary doctrines were being spread by foreigners in the country (*Chaffee, Jr.* 2, *Freedom of Speech* (1920) p. 29). Jefferson, the Republicans, and all those who spoke out against the Federalist war program were branded as "Jacobins" and French agents.

Against this background of manufactured hysteria, they were able to ram through Congress four measures: three directed at aliens, and, one directed at both aliens and citizens, but all designed to stifle opposition to their program. These measures are now known as the Alien and Sedition Laws of 1798. The first three (1 Stat. 566; 1 Stat. 577; 1 Stat. 570) gave the President power over aliens he might judge "dangerous to the peace and

safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof." The fourth act (1 Stat. 596), the Sedition Act, made punishable all unlawful combinations which "oppose any measure or measures of the government" or "impede the operation of any law or the United States"; and "any false, scandalous and malicious writing or writings against the government * * *; or to excite against them * * * the hatred of the good people of the United States, or to stir up sedition * * *; or to aid, encourage or abet any hostile designs of any foreign nation against the United States * * * ."

The passage of the Sedition Law was the signal for the outbreak of a reign of terror. A rash of prosecutions were instituted under it against proprietors, editors and chief writers of the Republican press, and individuals who espoused the cause of Republicanism (Anderson, F. M., *The Enforcement of the Alien and Sedition Laws: American Historical Association, Annual Report* (1912). The first victim, a Republican editor, Matthew Lyon, was convicted for publishing a letter in which he described President Adam's "continual grasp for power . . . unbounded thirst for ridiculous pomp, foolish adulation and self avarice." His fellow editor and supporter, Anthony Haswell, was fined and imprisoned for castigating Lyon's jailer as "a hard-hearted savage who has to the disgrace of Federalism been elevated to a station where he can satiate his barbarity on the misery of his victims." James Callendar, of Richmond, was convicted for publishing in his book, "The Prospect Before Us," the criticism: "The Reign of Mr. Adams has been one continual tempest of malignant passions * * *. Take your choice between Adams, war and beggary, and Jefferson, peace and competency." David Browne, an itinerant preacher was similarly convicted of sedition for erecting on the common at Dedham, Massachusetts, a liberty pole bearing the inscription:

> "No stamp act. No sedition, no alien bills. No land tax. Downfall to the tyrants of America. Peace and retirement to the President. Long live the Vice President and the

minority. May moral virtue be the basis of civil government."

Thomas Jefferson and James Madison led the struggle against the Alien and Sedition Acts. The *Kentucky Resolutions* drawn by Jefferson warned that the enforcement of the measures "would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority." (*Elliot's Debates, supra.*, p. 544). The *Virginia Resolutions* drawn by Madison declared that the Acts exercise "a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto—a power which, more than any other, ought to produce universal alarm because it is leveled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deem the only effectual guardian of every other right." (*Elliot's Debates, supra.*, p. 554.)

Taking their cue from Jefferson, the people everywhere awoke and mobilized themselves. They gathered in town meetings, county conferences and conventions and expressed their opposition to the repressive laws in resolutions such as that adopted at Lexington, Kentucky:

> "Resolved that the Alien bill is unconstitutional, impolitic, unjust and a disgrace to the American name."

With the national election, the Federalists were swept out of power. The Republicans repealed the Acts; Jefferson pardoned its victims. He wrote, some time after he retired from public life (September 6, 1819) concerning this:

> "A legislature had passed the sedition law. The Federal Courts had subjected certain individuals to its penalties of fine and imprisonment. In coming into office, I released those individuals by the power of pardon committed to executive discretion, which could never be more properly exercised than where citizens were suffering without the authority of law, or, which was equivalent, under a law unauthorized by the Constitution, and therefore null."

"The whole episode of the Alien and Sedition Acts burned itself indelibly into the American mind and tradition." (*Cushman, R. E., supra.*, p. 635). In *Abrams* v. *United States*, 250 U.S. 616 (1919), Mr. Justice Holmes stated (p. 630):

> "I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditions libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of 1798, by repaying fines that it imposed."

The People had won their first fight against the attempt to strangle American democracy by stifling the free communication of ideas through repressive government action. Yet, another attempt, cut in that pattern of 1798, has existed in the United States for a decade, intensified in the post-war years. The precise form is different, but the substance and effect are the same.

The House Committee on Un-American Activities in the course of so-called investigations, has set a norm and standard for "accepted" public opinion. "The Committee on Un-American Activities has seemingly been unwilling to tolerate those whose estimates of current problems do not match its own." Gelhorn, *Report on a Report of the House Committee on Un-American Activities*, 60 Harv. L. Rev. 1193. The acceptance of its ideas has been enforced by the labeling of non-conforming ideas as "subversive." During the course of its reign the Committee has condemned ideas of social and racial equality, H. R. 2, 76 Cong., 1st Sess. (1939); duty of government to support the people, *id.*; criticism of General MacArthur and Chiang Kai-Shek, H. R. 2233, 78 Cong., 2nd Sess.; attacks upon cartels and other industrial organizations, *id.*; America is a democracy, 79th Cong., 2nd Sess., Daily Appendix, 740; opposition to the Franco government of Spain, H. R. 2233, 79th Cong., 2nd Sess.; advocacy of a world state, *id.*; criticism of members of Congress, H. R. 2277, 77th Cong., 2nd Sess. It has labelled organizations and individuals as "subversive," whose principles embrace the non-conforming views.

The Committee enforces conformity by methods calculated

to frighten and demoralize vast segments of the population. ". . . exposure—it is the most effective weapon that we have in our possession." 83 Cong. Rec. 7570 (1938). ". . . Focus the spotlight of publicity upon their activities." H. R. Rep. No. 2, 76th Cong., 1st Secc. (1939) 13. ". . . by turning the light of pitiless publicity on the activities of organizations." *id.* et 24. "It is the way of exposure—a way which conforms to the letter and spirit of democracy, and is at the same time more effective than a Gestapo," H. R. Rep. No. 1, 77th Cong., 1st Sess. (1941), 23, 24. "This 'grand jury' will be in session to investigate Un-American Activities at all times." 81 Cong. Rec. 275. ". . . seek out and expose those activities which although legal are nonetheless Un-American, subversive and contrary to the American concept." 92 Cong. Rec. 5217.

Judge Edgerton, dissenting in *Barsky* v. *United States* 167 F. (2a) 241, 254, 255 (App. D. C. 1947), *cert. den.* 68 S. Ct. 155, *pet. for rehearing pending*, analyzed its methods as follows:

> "The investigation restricts the freedom of speech bq uncovering and stigmatizing expressions of unpopular views. The Committee gives wide publiicty to its proceedings. This exposes the men an women whose views are advertised to risks of insult, ostracism and lasting loss of employment. Persons disposed to express unpopular views privately, or to a selected group are often not disposed to risk the consequences to themselves and their families that publication may entail. The Committee's practice of advertising and stigmatizing unpopular views is therefore a strong deterrent to any expression, however private, of such views.
>
> "The investigation also restricts freedom of speech by forcing people to express views. . . . Witnesses before the House Committee are under pressure to profess approved beliefs. They cannot express others without exposing themselves to disastrous consequences."

The same standards adopted by the House Committee, serve as a foundation for "loyalty" investigations, oaths and inquiries.

Non-conformity in this area brings the serious penalty of loss of employment.

In these devious ways, then, the House Committee, and the agency of "loyalty" inquiries, are coercing conformity, complete and absolute, to a single standard of thought, and repressing, equally absolutely, every idea, person or organization which resists it, just as did the now infamous Alien and Sedition Acts.

Thus, the enabling resolutions, executive orders, and statutes which establish and create, and the inquiries and investigations which are conducted under the aegis of such laws by the Committee and by the agencies of government responsible for the execution of the "loyalty" programs, are violative of the Bill of Rights of the Constitution of the United States.

> "Our institutions were not devised to bring about uniformity of opinion; if they had been, we might well abandon hope. It is important to remember, as has been said, that the essential characteristic of true liberty is, that under its shelter many different types of life and character and opinion and belief can develop unmolested and unobstructed." (Charles Evans Hughes, Report of the American Bar Association, 1925, pp. 186-187).

The appellants, herein, have acted according to the precept of Thomas Jefferson who wrote in a letter to Benjamin Rush dated April 21, 1803:

> "It behooves every man who values liberty of conscience for himself, to resist invasions of it in the case of others; or their case may, by change of circumstances, become his own. It behooves him, too, in his own case to give no example of concession, betraying the common right of independent opinion, by answering questions of faith, which the law have left between God and himself."

Their prosecutions result from their resistance to unconstitutional invasions of the rights to freedom of speech, thought, advocacy and association. These infringements on fundamental liberties must be struck down in vindication of their rights as American citizens and in true respect for freedoms of all American citizens.

CONCLUSION

The Progressive Party and the American Labor Party, therefore, urge that this Court grant the Petitions for Certiorari herein, take jurisdiction of the cases and reverse the decisions below.

Dated: New York, New York
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Respectfully submitted,

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